TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 246.

FRANKLIN McVEAGH, PLAINTIFF IN ERROR,

vs.

A. H. HEALD, COLLECTOR OF TAXES FOR THE CITY OF CHICAGO, THE CITY OF CHICAGO, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED AUGUST 16, 1869.

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1 UNITED STATES OF AMERICA,
State of Illinois, Supreme Court, 3d Grand Division, ss:

Pleas before the honorable the justices of the supreme court of the State of Illinois in and for the third grand division thereof, at a term begun & held at the court-house in the city of Ottawa, in the county of La Salle, on the second Tuesday, being the eighth day, of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

Present, the Honorable Sidney Breese, chief justice.
" " " Charles B. Lawrence, justice.
" " " Pinkney H. Walker, justice.
" " " Robert G. Ingersoll, att'y general.
" H. A. McCaleb, sheriff of La Selle Co.

Attest: W. M. TAYLOR, *Clerk*

Be it remembered that heretofore, to wit, on the seventh day of September, in the year aforesaid, there was filed in the office of the
2 clerk of the supreme court aforesaid, a certain record of proceedings of the circuit court of Cook County, in said State; which said record is in the words & figures following, to wit:

3 UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Pleas before the Honorable Erastus S. Williams, judge of the seventh judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Cook County, in the State aforesaid, and at a term thereof begun and held at the court-house in the city of Chicago, in said county, on the third Monday (being the eighteenth day) of May, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-second:

Present, Honorable E. S. Williams, judge of the 7th judicial circuit of the State of Illinois; Charles H. Reed, State's attorney; John L. Beveridge, sheriff of Cook County.

Attest: WILLIAM L. CHURCH, *Clerk.*

4 *Bill.*

Be it remembered that heretofore, to wit, on the 25th day of May, in the year aforesaid, Franklin McVeagh, by Messrs. Mattocks and Mason, his solicitors, exhibited and filed in the court aforesaid, on the chancery side thereof, his certain bill of complaint against A. H. Heald, collector of taxes for the city of Chicago, and others, in the words and figures following, viz:

In circuit court of Cook County.

STATE OF ILLINOIS, *Cook County, ss:*

To the Honorable Erastus S. Williams, judge of said court in chancery sitting:

Your orator, Franklin McVeagh, brings this his bill of complaint against A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry T. Eames, R. R. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretsinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W
5 King.

And thereupon, respectfully complaining, says that the assessor of taxes for the south division of the city of Chicago, in the county and

State aforesaid, was duly appointed in March, 1867, and immediately commenced the discharge of his official duties as such; and in May, 1867, called on your orator at his place of residence, and required him to make a correct statement of his taxable property according to law; and your orator did accordingly list his property as by law required, giving to said assessor a true and correct statement thereof, with its value duly signed and verified, and his taxable personal property was in and by said listing valued at eight hundred dollars, and consisted of all his personal property then liable to taxation.

That on the first day of April, A. D. 1867, and from thence hitherto, your orator owed debts to the amount of five thousand dollars, of which fifteen hundred dollars was for money advanced to pay for his
6 shares in the said Commercial National Bank of Chicago, for adequate and actual consideration, and not otherwise, not including therein any bond, note, or obligation of any kind given to any mutual insurance company, nor any unpaid subscription to any religious, literary, scientific, or charitable institution or society, nor any subscription to, or installment payable on, the capital stock of any company incorporated or unincorporated, nor any obligation as a surety for others.

And your orator further shows unto your honor that on the 24th day of September, A. D. 1867, the said assessor of said south division of the city of Chicago returned his assessment or tax list of the personal property in said division, alleged to be liable to municipal taxation for the year 1867, which assessment or tax list contained the names of all persons whose personal property was designed for that year to be assessed, and was substantially as follows:

Said assessment or tax list contained, alphabetically arranged,
7 the names of said persons, with the valuation of their personal property, in seperate columns under the heading and in form thus:

List of personal property taxable in the south division of the city of Chicago, assessed for the year 1867.

Names.	Total valuation.
	Dollars.
A.	
B.	
C.	

And so on to the end of the alphabet; and among said names that of your orator appeared and appears, the valuation of his personal property being placed at eight hundred dollars, and the same being listed and valued with reference to the ownership and value thereof, April 1st, 1867; but no deductions were made from the valuation of said personal property by reason of the fact, and your orator avers it to have been a fact that your orator's said personal property so listed was not of a nature and character to be entitled to deductions.

8 And your orator further shows that said alphabetical list last mentioned concluded and concludes with a summary giving the totals of the valuation of the personal property of the persons under each letter, thus:

A	$777,818
B	$2,955,477
And so on, and footed up	$32,622,385

And your orator further shows that all of said personal property, included so far on said roll, was assessed and valued with regard to the ownership and value thereof on the 1st day of April, A. D. 1867.

And your orator further shows unto your honor, that following the list of persons whose property was so assessed as aforesaid, and additional thereto, said tax list or assessment continued as follows:

List of stockholders in First National Bank of Chicago.

Names.	Shares.	Total valuation.	Taxed for nine months.
		Dollars.	
A.	100 [Value of each share, $100.]	$10,000	
B.	200 [" " " "]	$20,000	

And so on, giving in seperate columns the names of said stockholders, the number of shares held by them, each valued at par, and the valuation thereof, and over the last column written the words, "Taxed for nine months," but no tax extended therein.

Your orator further shows unto your honor that after said last-mentioned list followed similar lists of all the shareholders in the national banks, so-called, being banks organized under the national bank act, so-called, of June 3d, 1864, in the said city of Chicago, arranged under seperate heads as "List of stockholders in the Second National Bank," and so on, arranged in the same way as last mentioned, and containing the names of the stockholders in the said several banks and the number of shares of stock respectively held by them, all valued at par, and the valuation thereof in seperate columns, and each of said lists concluding with the statement of "Total number of shares" so many, stating said total, and "Total valuation" so much, stating said total.

Your orator further shows unto your honor that the "Treasury Bank," the "State Savings Institution," the "Merchants' Loan and Trust Company," and the Merchants, Farmers and Mechanics' Savings Bank" are banks or banking associations organized and doing business under the laws of the State of Illinois, and that under the respective heads of "List of stockholders in Treasury Bank," and so on, in seperate columns, appear the names of stockholders in the State institutions, with the number of shares held by them and the valuation thereof (all being valued at par except stock in the Treasury Bank, which was valued at seventy cents), and the tax thereon, though not extended, being stated to be for twelve months for the year 1867, but that in the said national banks being stated to be for nine months of said year.

And your orator further shows that said lists of said State banks were set forth in connection with said lists of said national banks, and each of said lists concluded with the total number of shares in each bank and the total valuation thereof, and at the conclusion of all of said lists was a summary thereof stating the name of each of said banks or associations, State and national, the whole number of shares in each and the total valuation of all the shares in and of each, and footed up so as to show the total number of shares of all the banks, and the total valuation of all said shares.

Your orator further shows that the valuation of the shares of all of said banks and associations were made by said assessor, and that from the valuation of any or all of said shares, or from any or all of said banks or associations, no deductions were made, or had or have been made, save for the value of some real estate of the State Savings Insti-

State aforesaid, was duly appointed in March, 1867, and immediately commenced the discharge of his official duties as such; and in May, 1867, called on your orator at his place of residence, and required him to make a correct statement of his taxable property according to law; and your orator did accordingly list his property as by law required, giving to said assessor a true and correct statement thereof, with its value duly signed and verified, and his taxable personal property was in and by said listing valued at eight hundred dollars, and consisted of all his personal property then liable to taxation.

That on the first day of April, A. D. 1867, and from thence hitherto, your orator owed debts to the amount of five thousand dollars, of which fifteen hundred dollars was for money advanced to pay for his
6 shares in the said Commercial National Bank of Chicago, for adequate and actual consideration, and not otherwise, not including therein any bond, note, or obligation of any kind given to any mutual insurance company, nor any unpaid subscription to any religious, literary, scientific, or charitable institution or society, nor any subscription to, or installment payable on, the capital stock of any company incorporated or unincorporated, nor any obligation as a surety for others.

And your orator further shows unto your honor that on the 24th day of September, A. D. 1867, the said assessor of said south division of the city of Chicago returned his assessment or tax list of the personal property in said division, alleged to be liable to municipal taxation for the year 1867, which assessment or tax list contained the names of all persons whose personal property was designed for that year to be assessed, and was substantially as follows:

Said assessment or tax list contained, alphabetically arranged,
7 the names of said persons, with the valuation of their personal property, in seperate columns under the heading and in form thus:

List of personal property taxable in the south division of the city of Chicago, assessed for the year 1867.

Names.	Total valuation.
	Dollars.
A.	
B.	
C.	

And so on to the end of the alphabet; and among said names that of your orator appeared and appears, the valuation of his personal property being placed at eight hundred dollars, and the same being listed and valued with reference to the ownership and value thereof, April 1st, 1867; but no deductions were made from the valuation of said personal property by reason of the fact, and your orator avers it to have been a fact that your orator's said personal property so listed was not of a nature and character to be entitled to deductions.

8 And your orator further shows that said alphabetical list last mentioned concluded and concludes with a summary giving the totals of the valuation of the personal property of the persons under each letter, thus:

A	$777,818
B	$2,955,477
And so on, and footed up	$32,622,385

And your orator further shows that all of said personal property, included so far on said roll, was assessed and valued with regard to the ownership and value thereof on the 1st day of April, A. D. 1867.

And your orator further shows unto your honor, that following the list of persons whose property was so assessed as aforesaid, and additional thereto, said tax list or assessment continued as follows:

List of stockholders in First National Bank of Chicago.

Names.	Shares.	Total valuation.	Taxed for nine months.
		Dollars.	
A.	100 [Value of each share, $100.]	$10,000	
B.	200 [" " "]	$20,000	

And so on, giving in seperate columns the names of said stockholders, the number of shares held by them, each valued at par, and the valuation thereof, and over the last column written the words, "Taxed for nine months," but no tax extended therein.

Your orator further shows unto your honor that after said last-mentioned list followed similar lists of all the shareholders in the national banks, so-called, being banks organized under the national bank act, so-called, of June 3d, 1864, in the said city of Chicago, arranged under seperate heads as "List of stockholders in the Second National Bank," and so on, arranged in the same way as last mentioned, and containing the names of the stockholders in the said several banks and the number of shares of stock respectively held by them, all valued at par, and the valuation thereof in seperate columns, and each of said lists concluding with the statement of "Total number of shares" so many, stating said total, and "Total valuation" so much, stating said total.

Your orator further shows unto your honor that the "Treasury Bank," the "State Savings Institution," the "Merchants' Loan and Trust Company," and the Merchants, Farmers and Mechanics' Savings Bank" are banks or banking associations organized and doing business under the laws of the State of Illinois, and that under the respective heads of "List of stockholders in Treasury Bank," and so on, in seperate columns, appear the names of stockholders in the State institutions, with the number of shares held by them and the valuation thereof (all being valued at par except stock in the Treasury Bank, which was valued at seventy cents), and the tax thereon, though not extended, being stated to be for twelve months for the year 1867, but that in the said national banks being stated to be for nine months of said year.

And your orator further shows that said lists of said State banks were set forth in connection with said lists of said national banks, and each of said lists concluded with the total number of shares in each bank and the total valuation thereof, and at the conclusion of all of said lists was a summary thereof stating the name of each of said banks or associations, State and national, the whole number of shares in each and the total valuation of all the shares in and of each, and footed up so as to show the total number of shares of all the banks, and the total valuation of all said shares.

Your orator further shows that the valuation of the shares of all of said banks and associations were made by said assessor, and that from the valuation of any or all of said shares, or from any or all of said banks or associations, no deductions were made, or had or have been made, save for the value of some real estate of the State Savings Insti-

tution aforementioned, a bank or banking association organized and doing business under the laws of the State of Illinois, which de-
12 duction was made from the total valuation of the shares of that banking association; but your orator further says that he, your orator, if liable to be taxed upon such nation bank shares as he owned on the 1st of July, 1867, as hereinafter set forth, or if said shares were so liable to be taxed, was entitled, under the national bank act and the laws of this State, to deduct therefrom the amount of five thousand dollars, which he at that time owed as hereinafter set forth, and which was not so deducted, and that therefore said assessment is in contravention of said national bank act, and void.

Your orator further shows unto your honor that among the national banks, so-called, then and now doing business in said city of Chicago, was the Commercial National Bank of Chicago, which was (as all of said national banks were) duly organized under and by virtue of the act of Congress entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, commonly called
13 the "national currency act," or "national bank act," and of the capital stock of said Commercial National Bank your orator was, on the 1st day of July, A. D. 1867, the owner of fifty shares, and which said bank (as were all others, the said national banks aforesaid) was located within the said division of the said city of Chicago.

Your orator further shows unto your honor that one of the several lists of the stockholders of the several national banks aforesaid, in said assessment or tax list aforesaid, was a list of the stockholders of the Commercial National Bank aforesaid, and in said list appears the name of your orator as the owner of fifty shares of the capital stock of said bank, placed by said assessor at a valuation of $5,000, without any deduction of any nature or description.

Your orator further shows unto your honor that said assessment or tax list for the south division of said city of Chicago concludes as follows:

14 "*Summary.*

"Pers. prop.	$32,622,385
"Bank list	6,356,330
"Vend. list	1,706,500
	40,685,615

"CHICAGO, *September* 24, 1867.

"The foregoing volume, numbered one, contains the valuation of the taxable personal property in the south division of the city of Chicago for the year one thousand eight hundred and sixty-seven.

(Signed) "W. B. H. GRAY,
"*Assessor South Division.*"

And your orator further shows unto your honor that he believes the whole tax list or assessment of personal property for the city of Chicago was included in three books, one for each division of said city, numbered. respectively, "one," "two," and "three," and that each book concluded with a similar return to the foregoing under date Sept. 24, 1867, and that at the conclusion (being at the end of the last book, or the
15 one marked "three"), a similar return was made and signed by all the assessors of said city (of which there are three, one for each division thereof), and by the (so-called) commissioner of taxes, and that said books constitute the personal tax list for the year 1867.

And your orator further shows unto your honor that no other appraisal, listing, or valuation of personal property for taxation was made for the year 1867 by said assessor of said south division of said city of Chicago for said division than that contained in said book numbered "one," and hereinbefore called assessment or tax list.

Your orator further shows unto your honor that he was never in any manner notified or required to list his shares in the capital stock of said Commercial National Bank for taxation, in or by the city of Chicago aforesaid, or by the assessor aforesaid, and charges that said assessor for said south division of said city listed and valued the same as well as all the shares of the capital stock of all the other national banks
16 aforesaid by reference to lists of stockholders, and the number of shares held by each, and their place of residence posted up in said Commercial Bank of Chicago (and the other national banks aforesaid), as required by the law of Congress aforesaid, and that said assessor listed and valued the same after the first of July, A. D. 1867, and with reference to their value and ownership on that day.

Your orator further shows unto your honor that he was never in any manner notified that the appraisal, listing, or valuation, to wit, said assessment or tax list aforesaid, was being made, and had no knowledge nor information in respect thereto, nor did he know, nor had he any information, of the making thereof, until after said assessment roll was returned in the manner thereon issued as hereinafter named, and he was then informed as hereinafter stated.

Your orator further shows unto your honor that on the seventh day of October, A. D. 1867, the common council of the said city of Chicago (as your orator is informed and believes) passed an ordinance
17 levying a tax of thirteen mills in the aggregate, upon the real estate and personal property claimed to be subject to taxation in said city for the year 1867.

Your orator further shows unto your honor that thereupon the commissioner of taxes thereafterward copied said before-mentioned assessment or tax list, and extended the tax into the column designed therefor, and to the same was attached, under date October, A. D. 1867, a warrant for the collection of the taxes on the property in said list or assessment roll, which said warrant was thereupon on that day issued and delivered to said A. H. Heald, city collector of taxes, to execute, to whom said warrant was directed, and in and by said warrant the said collector was commanded to make, levy, and collect, as the taxes for the year 1867, the several sums of money set opposite the names of the persons therein included, of the goods and chattels of such persons.

18 Your orator further shows unto your honor that in and by said pretended warrant, your orator was and is required to pay the sum of forty-six $\frac{50}{100}$ dollars, as assessed against him as the owner of the national bank stock aforesaid; that the rate of taxation was thirteen mills, and that said tax is alleged in said warrant to be a tax for nine months of the year 1867, commencing, as your orator supposes, with the 1st day of July, 1867; but your orator charges that said tax must be held to be for the whole of said year, and therefore void, and if for a portion of the year, is for that reason void.

And your orator further shows unto your honor that, as he is informed, the said pretended assessment or taxation of your orator upon his said national bank shares, as aforesaid, is claimed to have been made by virtue of the provisions of a certain alleged act of the general assembly of the State of Illinois, entitled "An act to provide for the assessment and collection of taxes on the shares of capital stock in banks and
19 banking associations," approved June 13, 1867, which act was no[t]

passed at a regular session of said general assembly, but at a special session thereof, convened June 11, 1867, pursuant to the proclamation of the governor of said State, as by reference to the printed journals of said assembly of said special session will more fully appear.

Your orator further shows unto your honor that the said City of Chicago pretends that said tax aforesaid was lawfully levied under the alleged law aforesaid, as against your orator; and your orator further shows that the said A. H. Heald, as collector aforesaid, threatens to sell the shares of your orator in said Commercial National Bank of Chicago, to make therefrom the amount of the alleged tax thereon so pretended to have been levied, and the said City of Chicago threatens, in the name of its comptroller and other officers, to bring suit against your orator for the recovery of said tax and the collection of it out of the proceeds of the sale of your orator's said shares, and said City of Chicago pre-
20 tends and insists that said alleged tax is a lien upon the shares of your orator, so owned by him as aforesaid.

And your orator further shows unto your honor that the managing officers of said Commercial National Bank pretend that they are obliged by the act of the general assembly aforesaid to retain, out of any dividends to come to your orator upon his said stock aforesaid, as much as may be necessary to pay the alleged tax, so as aforesaid pretended to be levied, and threatens so to do, and your orator avers that dividends on said stock are now to him due thereon.

Your orator further shows unto your honor that said Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretsinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King constituted the board of directors of said Commercial National Bank, and that as such they withheld from your orator certain dividends
21 upon his said stock, to which he is entitled and which belong to him, and which are now due and payable to him, and threaten to pay said illegal tax to said collector, and to deduct the same from your orator's said dividend; that your orator has notified them not to pay said illegal tax, and has called upon them to pay over to him his said dividends, but they have refused so to do or to permit it to be done, unless your orator will consent to the payment by them, thereupon, of said illegal tax, which they threaten moreover to pay without your orator's consent, and will do so unless restrained by the injunction of this court; all of which—their proceedings, threats, and refusals—are in violation of the charter of said bank, and in breach of the trusts committed to them, and the duties imposed upon them by and under said charter.

Your orator further shows unto your honor that if A. H. Heald, city collector of said city of Chicago, and said City of Chicago, and said Commercial National Bank, and others, the said defendants, or
22 either or any of them be permitted to carry out their threats as aforesaid, your orator will be subjected to a multiplicity of actions, to a great loss of money, to double taxation, and other incidental and inevitable damage, and irreparable mischief will be done him in the premises, and that already such the proceedings of said city of Chicago, and said collector, and their pretences, have opperated and still opperate to embarrass your orator; and have and still do cast a cloud upon his ownership of and control over his said shares of stock in said bank as aforesaid, and that the course of said board of directors deprives your orator of his said dividends, and depreciates the value of his said stock.

Your orator further shows unto your honor that none of the officers of said national bank can be compelled by State authority to take any part in the collection, or securing the collection, of taxes levied by or

under State authority, nor to deduct taxes so levied from divi-
23 dends, nor otherwise to secure the same. Nor can they protect themselves, or any or either of them, under State authority in so doing.

Nor are the said shares of your orator in any event subject to taxation by said city of Chicago for the taxes of 1867.

And your orator further shows unto your honor that said last-mentioned act of the general assembly of the State of Illinois is void as to your orator, because contrary to the Constitution of the United States and of the State of Illinois, and to the provisions of the said national bank act.

And your orator further shows unto your honor that said before-mentioned pretended tax is void, by reason of the mode and manner in which the same is pretended to be levied, which was and is contrary to the Constitution and said specifically-named law of the United States, and the constitution and laws of Illinois.

And your orator, upon the foregoing facts and circumstances,
24 charges that said pretended tax is actually levied against the said Commercial National Bank of Chicago, and not against your orator, or his said shares, and is therefore null and void.

And your orator well hoped that the said defendants and each of them would have ceased their threats, as aforesaid, and that said pretended tax would have been cancelled, and its collection abandoned.

But now, so it is, may it please your honor, that said defendants, combining and confederating with divers others, to your orator unknown, but whom, when their names are known, your orator prays may be made parties hereto, with proper and apt words to charge them, and contriving how to harrass and annoy and damnify your orator in the premises, neglect and refuse so to do, and, in excuse thereof, set up a variety of unfounded pretences. All which sayings, doings, and pretences are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

25 In tender consideration whereof, and forasmuch as your orator is remidiless in the premises, at and by the strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this kind are cognizable and relievable.

To the end that said defendants may fully answer the premises, but not upon oath, their answer under oath being hereby waived, pursuant to the statute, and may, if they can, show why your orator is not entitled to the relief herein prayed.

That said aforementioned pretended tax may be declared null and void, decreed to be cancelled, and the collection thereof perpetually enjoined, and that in the mean time said defendants Heald and the City of Chicago be temporarily enjoined and restrained from making any effort to collect said tax by levy and sale, or by bringing suit against your orator, or otherwise.

And that said defendant, the Commercial National Bank of
26 Chicago, and the defendants, its board of directors, be enjoined and restrained from deducting or attempting to deduct said tax from any dividend that is or may become due to your orator, or otherwise aiding in the collection, or securing the collection of said pretended tax.

And for such further and other relief as required by the nature of your orator's, and as may be agreeable to equity and good conscience.

May it please your honor to grant unto your orator, not only the people's writ of subpœna, issued out of and under the seal of this honorable court, therein and thereby commanding said defendants, at a cer

tain day, and under a certain penalty, to be thereunder written, to be and appear before this honorable court, and stand to, abide by, and perform the further order of the court herein, but also the writ of injunction likewise so issuing, and therein commanding said defendants to absolutely desist and refrain, as hereinbefore prayed.

27 And, as in duty bound, will ever pray, &c.

FRANKLIN McVEAGH,
By MATTOCKS AND MASON,
His Solicitors.

M. W. FULLER, *of Counsel.*

Demurrer of the City of Chicago.

And afterwards, to wit, on the 25th day of May, in the year last aforesaid, said defendants, by their respective solicitors, filed in the court aforesaid their certain demurrers to said bill of complaint in the words and figures following, viz:

In the circuit court of Cook County.—Of the May T., 1868.

The demurrer of the City of Chicago, and A. H. Heald, city collector, two of the defendants to the bill of complaint of Franklin McVeagh, complainant.

These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things set forth and alleged, do demur thereto, and for cause of demurrer show—

1. That said complainant hath an adequate remedy at law.

2. That said complainant has not, in and by his said bill, made

28 or stated such a case as doth or ought to entitle him to the relief sought and prayed, or to any relief from these defendants, or either of them.

Wherefore and for divers other errors and imperfections appearing in said bill of complaint, these defendants humbly pray the judgment of this honorable court, whether they, or either of them, shall be compelled to make any other answer to the said bill, or any of the matters and things therein contained, and pray to be hence dismissed, with their reasonable costs in this behalf sustained.

S. A. IRVIN,
Sol'r, and of Counsel for City of Chicago and A. H. Heald.

Demurrer of Commercial National Bank of Chicago.

In circuit court of Cook County.

STATE OF ILLINOIS, *Cook County, ss:*

FRANKLIN McVEAGH
vs.
A. H. HEALD, COLLECTOR OF TAXES FOR THE city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. R. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer,

29 Albert Keep, William H. Ferry, William A. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King.

These defendants respectively, excepting A. H. Heald and the City of Chicago, by protestation, not confessing or acknowledging all or any

of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show that the said complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such relief as is thereby sought and prayed for from or against these defendants. Wherefore these defendants demand the judgment of this honorable court, whether they shall be compelled to make any further or other answer, &c.

By E. B. WIGHT, *their Solicitor.*

And thereupon, on the 28th day of May, in the year last aforesaid, it being one the days of the May term of said court for the year last aforesaid, the following proceedings, among others in said court, were had and entered of record in said cause, viz:

30

Judgment $29,535 *on demurrers.*

FRANKLIN MCVEAGH *vs.* N. H. HEALD, COLLECTOR OF TAXES FOR THE city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; Henry F. Eames, P. R. Westfall, H. S. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretsinger, Alonzo Campbell, Henry H. Taylor, N. O. Williams, and Henry W. King.	Bill.

This day said cause came on to be heard upon the several demurrers of the said City of Chicago, and A. H. Heald, city collector, and the Commercial National Bank of Chicago, and others, to the bill of complaint filed in said cause against them by said complainant, and was submitted to the court without argument. Whereupon the court

31 doth pro forma find that said bill of complaint, and the matters therein as stated and set forth, are not sufficient in equity to entitle said complainant to the relief therein prayed for against the said defendants, or either of them, and that said defendants are not now either of them bound by the law to answer the same.

It is therefore ordered, adjudged, and decreed that the complainant's said bill of complaint be dismissed out of this court for want of equity, and it is hereby dismissed accordingly. And it is further ordered and considered by the court that said defendants recover of the said complainant their costs in that behalf expended to be taxed, and that they have execution therefor.

32 STATE OF ILLINOIS, *Cook County, ss:*

I, William L. Church, clerk of the circuit court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the papers on file, and proceedings of record in said court in a certain cause lately pending therein on the chancery side thereof, wherein Franklin McVeagh was complainant and the city of Chicago, A. H. Heald, and others, defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Chicago, in said county, this 29th day of May, A. D. 1868.

[SEAL.] WM. L. CHURCH, *Clerk.*

Costs for record, $7^{75}.

[Stamp.]

33 In supreme court of Illinois.—June 1st, 1868.

FRANKLIN MCVEAGH, PL'F IN ERROR,
vs.
A. H. HEALD, COLLECTOR IN THE CITY OF Chicago, the Commercial National Bank of Chicago, & others, def'ts in error.

And now, on the first Tuesday of June, A. D. 1868, at this same term, before the judges of the supreme court, comes said pl'f in error, by M. W. Fuller, his solicitor, prays that in the record & proceedings aforesaid, and in rendering the judgment aforesaid, there is manifest error; in this, that the court erred in sustaining the demurrers, & each of them; that the judgment below should have been for the compl't, and not for def'ts.

Wherefore, for the errors aforesaid & others, the errors in the proceedings aforesaid, the said pl'f in error prays that said judgment may be reversed, &c.

By M. W. FULLER, *his Solicitor.*

34 In the supreme court of Illinois, third grand division.—Sept. term, A. D. 1868.

FRANKLIN MCVEAGH, PL'F IN ERROR,
vs.
THE CITY OF CHICAGO & A. H. HEALD, two of def'ts in error.

And now comes the said City of Chicago, and the said Heald, by S. A. Irvin, their solicitor, and say there is no error in the proceedings and judgment or decree herein, & prays the same may be in all things affirmed, &c.

S. A. IRVIN,
Sol. for City & Heald.

Upon the back of which record, errors, & joinder, there appears the following endorsement & filing:

139. Franklin McVeagh vs. the city of Chicago. A. H. Heald et al. Record.

Filed Sept. 7th, 1868.

W. M. TAYLOR, *Clk.*

35 And afterwards, to wit, on the eighteenth day of September, the same being one of the days of the September term of said court, the following among other proceedings were had and entered of record in said cause:

FRANKLIN MCVEAGH
vs.
THE CITY OF CHICAGO, A. H. HEALD, ET AL. } Error to Cook.

On this day this cause coming on to be heard, the appellee, by S. A. Irvin, attorney, submit this cause on abstracts & briefs filed.

And afterwards, to wit, on the (19) nineteenth day of September, 1868, the same being one of the days of the September term of said court for the year 1868, the following among other proceedings were had and entered of record:

36 FRANKLIN MCVEAGH
vs.
THE CITY OF CHICAGO, A. H. HEALD, ET AL. } Error to Cook.

On this day this cause coming on to be heard, the appellant, by Melville W. Fuller, his attorney, submit, for the consideration of the court, this cause upon briefs and arguments filed with the clerk of this court.

And afterwards, to wit, on the twenty-ninth day of January, in vacation after said September term of said court, the following opinion of the supreme court of the State of Illinois was filed in the office of the clerk thereof; which opinion is in the words & figures, to wit:

37 No. 139.

FRANKLIN MCVEAGH AND A. H. HEALD
vs.
THE CITY OF CHICAGO. } Appeal from Cook.

Opinion by Breese, Ch. Justice.

This was a bill in chancery in the Cook circuit court exhibited by Franklin McVeagh against the city of Chicago, to restrain the collection of the taxes assessed by the authorities of that city on certain shares of stock held by complainant in the Commercial National Bank of Chicago, on the allegation, among others, that the act of the general assembly of June 13, 1867, was unconstitutional and void so far
38 as it provides for taxation in respect to bank shares for the year 1867, and that the assessment was void, because, contrary to the first provision of section 41 of the national banking act in these particulars; that the shares in question were not included in the valuation of the personal property of the owner, and that the assessment and tax are void, because the shares are placed in the valuation at a greater rate than other moneyed capital, no deductions being allowed for debts due, and owing by the shareholders; and because the act of 1867 is contrary to the national bank law.

A demurrer was sustained to the bill, and a judgment rendered against complainant for costs, to reverse which he has brought the record here by writ of assigning as error, sustaining the demurrer to the bill.

These several points made by the bill are argued at great length, and we have given them full consideration.

39 The first objection implies a want of constitutional power in the legislature to enact the law.

That must be shown by the party making the charge, the presumption being that every law passed by the legislature is in conformity with the Constitution, unless the contrary be shown, and it must be, as this court has often decided, a clear and palpable case, before this court will undertake to decide an act of a co-ordinate department of the government was beyond their constitutional competency to enact.

The argument of counsel in support of this objection is founded on the fact that inasmuch as appellant's shares were not assessed on the first day of April, 1867, they could not be assessed on the first day of July thereafter for the year 1867, for that would violate the principle of equality and uniformity established by the Constitution.

An examination of the revenue law of this State has not shown us that the shares should be assessed for taxation on the first day of April.

Indeed, it would be impracticable so to do, as the assessment may require months to complete it.

This assessment was for municipal, not State, purposes; and if the charter of the city required the assessment to be made on the first day of April, and it was not so done, as it could not be, then it should be shown that an injury has resulted by making the assessment on a different day.

Admit the valuation of appellant's shares was determined on the first day of July, and the law required it should be determined as of the first day of April. Surely it would be necessary for appellant, calling upon a court of equity for relief, to allege and prove he has been injured thereby; that by reason thereof his shares have been valued too high, or that there was a difference in their value on the two specified days, being higher on the first day of July than they were on the first day of the preceding April, whereby he would be compelled to pay a greater tax. No such matter is alleged in the bill of complaint.

If no injury has been occasioned by the act of which complaint is made, or omission to act in strict compliance with the law, it is certainly incumbent on complainant to show that in his case the tax assessed against him at the time charged violated the principles of uniformity and equality required to be observed by constitutional provisions and by decisions of this court.

The great central idea of our Constitution, in this behalf, as we have before said in Chi., B., and Q. R. R. Co. vs. the supervisors of Bureau County, was equality of taxation, so that one man or corporation should not be required to pay a greater tax on the same description of property than another in the same locality.

In what way the taxation here complained of violates this principle, is not perceived.

It is not alleged or pretended that in taxing appellant's shares a discrimination has been made to his prejudice, or that he has paid a double tax; first, on the money listed for taxation on the first of April, and again on the bank shares he purchased with this same money between that day and the first day of July.

We cannot perceive wherein the act violates the Constitution.

It is not claimed appellant has paid any tax whatever upon the money with which he purchased these shares, nor is it shown that they have been valued higher than like shares in the same institution, or that the valuation put upon them on the first day of July was greater than they justly bore on the first day of April preceeding.

It is admitted taxation of a property owner should be by the operation of a general law affecting all classes of people; but when a particular species of property has been omitted from taxation for a given year, where is the inhibition upon the legislature to pass a special law to cure the omission? Such is the nature of the law in question.

The tax on bank shares was not properly assessed; they were not in fact assessed by reason of the defective law under which it was attempted.

This act was designed only to supply that omission, and we must give it effect, not being convinced of the want of constitutional power in the legislature to enact it.

The next objections are, that the sixth section of the act is void, being contrary to the limitations imposed by the proviso of the forty-first section of the national banking act of June 3d, 1864, in prescribing a mode of taxation different from that applied to other personal property, whereas the bank act requires the shares to be included in the list of the

personalty of the owner delivered to the assessor for taxation, and that the shares are placed in the valuation at a greater rate than other moneyed capital, no deductions being allowed for debts due and owing by the shareholder.

44 The argument is, taking these objections together, as they should be so taken, having such an intimate connexion, that the shares should have been included in that list, so that upon aggregating the personal property, shares included, the taxable portion would be shown by what remained after the deduction for debts was made; and that the policy of the law is, that a man shall be taxed on what he is worth, at least so far as personal property was concerned.

These objections are satisfactorily answered by considering the proviso of the act of 1864, and the connection of our act of 1867 therewith.

That proviso is as follows: Provided, That nothing in this act shall be construed to prevent all the shares in any of the said associations held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under State authority at the place where such bank is located, and not elsewhere, but not at a greater rate

45 than is assessed upon other moneyed capital in the hands of individual citizens of such State.

The sixth section of our act is as follows:

"6. All assessments of the capital stock of banks organized under the laws of this State, or of the property of such banks, made for State, county, or municipal purposes, for the year A. D. 1867, by virtue of the laws heretofore in force, are hereby vacated and declared to be void and of no effect; and it is hereby made the duty of the assessors of the several counties and towns, cities or districts, in this State, in which such banks so organized, or in which any banks or banking association, organized under the laws of the United States, are or may be located, to assess the shareholders in the same upon the value of their shares, and to assess the real estate, if any, in which any part of the capital stock of such banks or banking associations is invested in the same manner and sub-

46 ject to the same regulations, except as provided in this act, as is provided by law for the assessment of other real and personal property, in the same county or town, city or district; such assessment to be made for the year 1867, with regard to the ownership and value of such shares, on the first day of July, 1867, and annually thereafter with regard to the ownership and value of the same, on the day which may be specified by the laws in force concerning the assessment of other taxable personal property in this State."

The object of this section is quite apparent, being plainly expressed. Assessments before its passage had been made for revenue purposes upon the capital stock of these banks, and the taxes were in process of collection.

This act vacated the assessments and put a stop to the collection of such tax; and to supply the deficiency in the revenue which would be thereby occasioned, the assessors were required to assess the shareholders in the banks upon the value of their shares.

47 The act of Congress did not intend to prescribe a mode by which alone the State could tax the shares.

That was for State legislation under the limitations and restrictions prescribed by the act.

To get at the shares, it would be proper to require them to be included in the valuation of the personal property; not that they should, but might, occupy a different column in the bill.

It cannot be understood to mean, as appellant's counsel insist, that it should be included in such valuation, to enable the shareholder to deduct from their value such debts as he might owe, as required by the general revenue law.

To us it appears that this part of the proviso was intended merely to indicate to the assessors, in making up the assessment roll, to place the value of the shares in the column in which personal property is placed seperately, so as to show its seperate amount.

48 In th is particular case the shares could not be included in the valuation of the personal property, for that had been made long before the passage of this act, and the act was intended to supply an omission, as we have before said, and could not contain such a provision.

The great object intended by the proviso was, that the shares should be assessed at the place where the bank was located, and that they should not be assessed at a greater rate than should be assessed upon other moneyed capital in the hands of individual citizens.

But is the appellant entitled to the deduction he claims? For, if he is not, the first objection is quite immaterial, no matter where, on what portion of the list, these shares are found.

If it had been the intention of the legislature to permit a deduction, they would have used language indicative thereof, by declaring that bank shares shall be taxed like other personal property.

49 Having been denied the right to tax the capital stock of the banks, the legislature declares that the shareholders shall be assessed and taxed on the value of their shares, by which mode as much revenue would be derived as from the former exploded mode.

The language and object of the act are plain. This is the first section: "Hereafter no tax shall be assessed upon the capital of any bank or banking association organized under the authority of this State, or organized under the authority of the United States, and located within this State; but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein in the county, town, or district where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such town, county, or district, or not, but not at any greater rate than is or may be assessed upon other moneyed capital in the hands of indi-

50 viduals in this State. And in case any portion of the capital of such bank or banking association is invested in real estate, then there shall be deducted, in making the assessment of such shares, from the value of the same such sum as shall bear the same proportion to the value of such shares as the assessed value of all such real estate bears to the whole capital stock of such bank or banking association: Provided, That nothing herein contained shall be held or construed to exempt from taxation the real estate held or owned by any such bank or banking association, but the same shall be subject to State, county, municipal, and other taxation to the same extent and rate and in the same manner as other real estate is or may be taxed."

The old system of taxing banks on their capital stock being exploded, this new system was devised, by which an amount of revenue would accrue equal to that derived from taxing the capital stock.

51 The only deduction allowed by the act, from the value of the shares of each owner, is a proportionate sum for the real estate in which a portion of the capital might be invested.

Appellant's case is not governed by the general law, but by this act; and we look in it in vain for any sanction to the claim for deductions on which he insists.

The intention of the legislature is further evident from the second section of the act, which is as follows:

"There shall be kept, at all times, in the office where the business of such bank or banking association, organized under the laws of this State, or of the United States, shall be transacted, a full and correct list of the names and residences of all the stockholders therein, and of the number of shares held by each, and such list shall be subject to the inspection of the officers authorized to assess taxes, or to assess property for taxation, during the business hours of each day in which business may be legally transacted; and it shall be the duty of each
52 county, town, city, or district assessor to ascertain and report to the county clerk of his county, or the other proper officer, as a part of his return of the assessment of property, a correct list of the names and residences of all stockholders in any such bank or banking association located in his county or town, with the number and value of all such shares held by each of them respectively, showing the name of each of such banks or banking associations in which such shares are held; and such return shall also show what deduction, if any, is to be made from the value of such shares on account of the investment of any of the capital stock of such bank or banking association in real estate, as set forth in the first section of this act."

A deduction for real-estate investments being specially named, excludes the idea of any other deduction.

It is quite apparent that owners of bank shares, under the system inaugurated by this act, were not intended to be placed on the same
53 footing with owners of other personal property.

The object of the act was to supply the place of a system which had been overturned by the decision of the Supreme Court of the United States in Bradbury's case, and to institute for the capital stock the full shares into which that stock was divided without any deduction save for investments in real estate, and which was taxable as other real estate, and thus obtain from the bank and the shareholders together as much as it did before from the tax on the capital.

That a new system was devised is further discoverable from section four:

"4. The collector of taxes, and the officer or officers authorized to receive taxes from the collector, may, all or either of them, have an action to collect the tax assessed on any share or shares of stock owned by nonresidents of this State, from the avails of the sale of such share or shares; and the tax assessed against such share or shares shall be and
54 remain a lien thereon till the payment of said tax."

No such provision as this is found in the revenue law, nor is such an one as is contained in section 5 found in it:

"§5. For the purpose of collecting such taxes, and in addition to any other law not in conflict with the Constitution of the United States relative to the imposition of taxes, it shall be the duty of every such bank or banking association and the managing officers thereof to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes assessed in pursuance of this act until it shall be made to appear to such officers that such taxes have been paid; and any officer of such bank who shall pay over or authorize the paying over of any such dividends or any portion thereof, contrary to the provision of this section, shall thereby become personally liable for all such tax; and if the said tax shall not be paid, the collector of tax where the bank is located shall sell said share or shares to pay
55 the same like other personal property."

In view of this legislation, it must be apparent that a system of taxation for bank shares was designed peculiar to itself, and independant of the general revenue system of the State.

No deduction being allowed under this system, except for investments in real estate, the objection that the shares are valued at a greater rate than other moneyed capital of the State falls to the ground.

Value of property is one thing, and the rate at which it shall be taxed is entirely different.

Rate is the proportion or percentage which property shall bear, no matter what its value.

It does not vary as values vary, but is always the same. One per cent. or three per cent. on an ascertained valuation applies to all property equally, however much the values may differ.

The meaning of the act evidently is, that the rate or percent-
56 age of taxation in bank shares shall be no greater than the rate imposed on other property. No violation of the act is shown in this regard.

This provision of the fifth section is attacked by appellant on several grounds.

We do not deem it necessary to defend it, as the remaining portions of the act would be effectual for the purposes intended if that was stricken out, save the last clause, to which no objection has been made. Under that clause, should a collector be compelled to sell the shares for non-payment of the taxes, and the bank refuse to transfer them to the purchaser on the books of the bank, a court of chancery on a bill filed for such purpose would compel the transfer.

But on principle we can perceive no valid objection to the section.

The State is entitled to its revenue. It has a right to use all the means, summary or otherwise, not prohibited by a higher power, to collect them.

57 In case of bank shares, if they are taxed and the taxes remain unpaid, through the dividends, as provided by this law, the State could, by mandamus, compel the officers of the bank to appropriate the dividends, or such portions as might be necessary, to pay the taxes.

This question is fully discussed by the court of appeals of Maryland in the case of the State vs. Mayhew (2 Gill., 487), in most of the reasoning of which, and in the conclusions we concur, and are in accordance with what we have said above.

Upon the last point made, that appellant had no notice of the assessment, it is sufficient to say that it is not necessary he should have actual notice, the law requiring only that notice of the assessment should be published in a newspaper of the city a certain length of time.

It is not denied such notice was given.

Perceiving no errors in the record, the decree dismissing the bill must be affirmed.

58 And afterwards, to wit, on the tenth day of February, A. D. 1869, in vacation after the said September term of this court, the following order was entered upon the records of said; which order is in the words & figures following, to wit:

Vacation after Sept. term, A. D. 1868.—Feb'y 10, A. D. 1869.

139.

FRANKLIN MCVEAGH, PL'FF IN ERROR,
vs.
A. H. HEALD, COLLECTOR OF TAXES FOR THE city of Chicago; the City of Chicago; the Commercial National Bank; Henry F. Eames, P. A. Westfall, H. B. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Krietsinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, directors of the Commercial National Bank of Chicago. } Error to Cook.

59 This cause coming on to be heard upon errors joined, was fully argued at the September term, A. D. 1868, of this court; and the court being now fully advised in the premises, doth order, adjudge, and decree that the decree of the court below, dismissing said complainant's said bill of complaint, be and it is hereby in all things affirmed at the cost of said plaintiff in error. Whereupon, on motion of the solicitor of the plaintiff in error, it is by this court certified herein that in this said suit the validity of a certain statute of the State of Illinois, to wit, the fifth & sixth sections of a statute of said State, approved June 13th, 1867, and entitled "An act to provide for the assessment and collection of taxes on the shares of capital stock in banks and banking associations," was drawn in question on the grounds that said statute was repugnant to the Constitution and laws of the United States, and the decision of this court is in favor of the validity of said statute; and the validity of an assessment of taxes, by and under the authority of the State of Illinois, was drawn in question in this suit on the ground that said assessment was and
60 is void because in repugnance to the Constitution and laws of the United States, and the decision of this court is in favor of the validity of said assessment under authority of the State in that behalf.

And it is further certified that in this suit was drawn in question the construction of the 41 section, and its provisoes, of a certain statute of the United States, approved June 3d, 1864, and entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," and the decision of the court was against the right, privilege, or exemption set out and claimed by the plaintiff in error herein.

And it is ordered that this certificate accompany and be made a part of the order of affirmance aforesaid.

Done at chambers, at Springfield, this 5th day of February, 1869

SIDNEY BREESE,
Chief Justice Supreme Court.

61 STATE OF ILLINOIS, *ss:*

I, Woodbury M. Taylor, clerk of the supreme court of the State of Illinois, for the third grand division thereof, do hereby certify, in answer to the writ of from the circuit court of the United States for the northern district of Illinois, that the above and foregoing is a true, full, & complete of all the proceedings, with the record of the court below, in a certain cause lately herein pending, and wherein Franklin McVeagh was

plaintiff in error, and A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Krutzinger, Alonzo Campbell, Albert Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, directors of said bank, were defendants in error.

In witness whereof, I have hereunto placed my name & the seal of said supreme court, at Ottawa, in the State of Illinois, this 6th day of July, A. D. 1869.

[SEAL.] W. M. TAYLOR,

62 In Supreme Court of the United States.—Of Deecember term, A. D. 1869.

FRANKLIN MCVEAGH
vs.
A. H. HEALD, COLLECTOR OF TAXES FOR THE city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, & Henry W. King. } In error.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Franklin McVeagh, by James H. Roberts, Melville W. Fuller, & Mattocks & Mason, his attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given for the said A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, against the said Franklin McVeagh, whereas, by the law of the land, the said judgment ought to have been given for the said Franklin McVeagh, against the said A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King. And the said Franklin McVeagh prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

JAMES H. ROBERTS,
MELVILLE W. FULLER,
MATTOCKS & MASON,
Attorneys for Pl'ff in Error.

63 In the Supreme Court of the United States.

FRANKLIN MCVEAGH, PL'FF IN ERROR, *vs.* A. H. HEALD, COLLECTOR OF TAXES FOR THE city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, directors of said bank.	Error to the supreme court of Illinois.

Know all men by these presents, that we, Franklin McVeagh, of the city of Chicago, county of Cook, and State of Illinois, as principal, and John Mattocks and Edward G. Mason, of the same place, as
64 sureties, are held and firmly bound unto A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, in the sum of two hundred and fifty dollars, to be paid to the said A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, their executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Approved:

D. DAVIS, *Judge, &c.*

65 Sealed with our seals and dated this 5th day of June, A. D. 1869.

[SEAL.]

Whereas the above-named Franklin McVeagh has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named Franklin McVeagh shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FRANKLIN MAC VEAGH. [SEAL.]
JOHN MATTOCKS. [SEAL.]
EDWARD G. MASON. [SEAL.]

66 Sealed and delivered in presence of—

Word "reverse," in the tenth line from the end, inserted before signing.

I, William H. Bradley, clerk circuit court of the United States in & for the northern district of Illinois, do hereby certify thro' & from my knowledge of Messrs. Mattocks & Mason, the sureties on the foregoing bond, I should consider the same perfectly good.

WM. H. BRADLEY, *Clk.*

STATE OF ILLINOIS, *ss:*

I, Woodbury M. Taylor, cl'k of the supreme court of the State of Illinois for the third grand division thereof, do hereby certify that the foregoing is a true copy of a bond filed in this office in the case of Franklin McVeagh vs. A. H. Heald (collector of taxes, &c., for the city of Chicago), the City of Chicago, the Commercial National Bank of Chicago, et al.

In witness whereof, I have hereunto set my hand and placed the seal of said supreme court, at Ottawa, this 28th day of July, 1869.

[SEAL.] W. M. TAYLOR.

(Indorsed:) 139. Franklin McVeagh vs. A. H. Heald. Copy of bond.

67 In the Supreme Court of the United States.

To the Hon. David Davis, one of the justices of the Supreme Court of the United States:

Your petitioner, Franklin McVeagh, respectfully represents and shows unto your honor that he resides in the city of Chicago, the county of Cook, and State of Illinois.

That on the 25th day of May, 1868, he exhibited his bill of complaint on the chancery side of the circuit court of Cook County against one A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, directors of said bank, alleging—

That your petitioner was, and had theretofore been, the owner of certain shares of the stock of the said defendants' bank, being a bank created and organized under the act of Congress of June, A. D. 1864, commonly called the national bank act.

That the city of Chicago, through its authorities, had pretended, in the year 1867, to levy a tax for that year upon your petitioner's
68 said shares, which tax was absolutely void, as was the statute of Illinois attempting to authorize the same, because in contravention of said act of Congress and the federal Constitution, the reason and grounds for such allegation being fully detailed in said bill of complaint.

And that the defendant, Heald, was attempting to collect such void tax, while the said defendants, the bank and its directors, were threatening to pay the same, and refusing to pay your petitioner certain dividends due to him on his said shares, unless he would permit them to deduct such illegal tax therefrom.

And praying for an injunction and other relief.

Your petitioner further shows that to said bill of complaint said defendants filed their demurrers, which were sustained by the said circuit court, and your petitioner's bill of complaint dismissed, and final judgment rendered against him for costs; whereupon your petitioner prosecuted his writ of error upon said judgment to the supreme court of the

State of Illinois, which last-mentioned court is the tribunal of last resort in said State, and by which said judgment was affirmed.

That the chief justice of said supreme court of Illinois has, as a part of the order of affirmance of the judgment aforesaid, duly certified that the validity of a statute of the State of Illinois, and authority
69 exercised under said State, was drawn in question in said suit on the ground of such statute and authority being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of such State statute and exercise of State authority.

And also that the construction of a statute of the United States was drawn in question in said suit, and the decision of the court was against the right, privilege or exemption specially set up and claimed by your petitioner under such clause of said statute.

Wherefore, inasmuch as your petitioner is entitled, under the 25th section of the federal judiciary act, to prosecute his writ of error to the Supreme Court of the United States, from the said judgment of the supreme court of Illinois, he prays that your honor may endorse hereon an order that such writ of error issue, and may approve the bond, and sign the citation also herewith presented.

FRANKLIN McVEAGH,
By his solicitor, M. W. FULLER.

70 STATE OF ILLINOIS, *Cook County, ss:*

Personally comes Melville W. Fuller, and, being duly sworn, says that he is one of the solicitors of the within-named petitioner; that he makes this affidavit on his behalf; that he has read said petition and knows the contents thereof, and believes the same to be strictly true as therein stated, and as appears by the record therein referred to.

MELVILLE W. FULLER.

Subscribed and sworn to before me this 14th day of May, A. D. 1869.
[SEAL.] EUGENE B. WIGHT,
Notary Public.

(Indorsed:) In Supreme Court of the United States. 139. Franklin McVeagh vs. A. H. Heald, collector, & als. Petition.

71 UNITED STATES OF AMERICA, *ss:*

The United States of America to the honorable the judges of the supreme court of the State of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a plea which is in the said supreme court of the State of Illinois before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had in said suit, between Franklin McVeagh and A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, wherein was drawn in question the validity of a statute of the said State of Illinois, and of authority exercised under the
72 said State, on the ground of such statute and authority being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of such State statute and the

exercise of such authority; and wherein was also drawn in question the construction of a statute of the United States, and the decision of the court was against the right, privilege, or exemption specially set up and claimed under such statute, a manifest error hath happened to the great damage of the said Franklin McVeagh, as by his said complaint appears:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Su-
73 preme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 5th day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-third year.

[SEAL.] WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

74 (Indorsed:) 139. Franklin McVeagh v. A. H. Heald, collector, &c., & als. Writ of error.

75 UNITED STATES OF AMERICA, *ss:*

To A. H. Heald, collector of taxes for the city of Chicago; the City of Chicago; the Commercial National Bank of Chicago; and Henry F. Eames, P. A. Westfall, H. Z. Culver, Bacon Wheeler, E. F. Pulsifer, Albert Keep, William H. Ferry, William H. Kretzinger, Alonzo Campbell, Alfred Cowles, Henry H. Taylor, N. O. Williams, and Henry W. King, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois in the third grand division thereof, wherein Franklin McVeagh is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable David Davis, justice of the said Supreme Court of the United States, this 5th day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] DAVID DAVIS,
One of the Justices of the Supreme Court of the United States.

76 STATE OF ILLINOIS, *Cook County, ss:*

Personally comes Melville W. Fuller, and being duly sworn on oath, declares and says that, on this 8th day of June, A. D. 1869, he served the within citation upon the within-named defendants by delivering a

true copy of the same to S. A. Irvin, esq., corporation counsel of the city of Chicago, and the attorney of record in said within-named cause of the within-named defendants, the City of Chicago, and A. H. Heald, collector of taxes for the city of Chicago, and a true copy thereof to E. B. Wight, esq., attorney of record for the Commercial National Bank of Chicago, & all the other within-named defendants, the City of Chicago and said A. H. Heald.

MELVILLE W. FULLER.

Subscribed and sworn to before me, clerk of the circuit court of Cook County, Illinois. Witness my hand and the seal of said court this 8 day of June, A. D. 1869.

[SEAL.] NORMAN J. GASSETT, *Clerk.*

(Indorsed:) In the Supreme Court of the United States. 139. Franklin McVeagh vs. A. H. Heald, collector, &c., & als. Citation.

(Indorsement on record:) Illinois sup. court. No. 246. Franklin McVeagh, plaintiff in error, vs. A. H. Heald, collector of taxes for the city of Chicago, the City of Chicago, et al.

Filed 16th August, 1869.